



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,302	07/09/2003	Hans-Artur Bosser	21295-55	1301
29127	7590	01/31/2006	EXAMINER	
HOUSTON ELISEEVA 4 MILITIA DRIVE, SUITE 4 LEXINGTON, MA 02421			GABOR, OTILIA	
			ART UNIT	PAPER NUMBER
			2884	

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

EF

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/604,302

Applicant(s)

BOSSER, HANS-ARTUR

Examiner

Otilia Gabor

Art Unit

2884

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-17.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

OTILIA GABOR
PRIMARY EXAMINER
Otilia Gabor
Primary Examiner
Art Unit: 2884

Continuation of 11. does NOT place the application in condition for allowance because: The argument that Engelhardt does not disclose the specific steps of calibrating a sensor is not persuasive because in the final rejection it was Brody who was used to teach the specific steps and not Engelhardt. The argument that Brody does not disclose the specific calibration steps is not persuasive because the steps that Brody fails to explicitly disclose are the steps that are inherently present in the definition of "calibration". Brody does disclose that a sensor is calibrated using an external source which is controlled so that its light output is varied. Brody also discloses that a filter is positioned between the light source and the sensor so that the light quantity and wavelength that reaches the sensor can be varied. Brody also discloses that there is a shutter in between the source and the sensor so that the time and period of calibration is controlled. What Brody does not specifically disclose is that there is a first response characteristic which is stored and that there is a response characteristic at a later time and that the sensor is calibrated by comparing this later response characteristic with the first response characteristic to identify the changes in the sensor response. However, these steps are the ones that are inherently present in the word "calibration". The word "calibrating" means (not only considering those with skill in this art but the Webster dictionary) "to check, adjust, or determine by comparison with a standard" or "to make corrections in or adjust", or "to standardize by determining the deviation from a standard so as to ascertain the proper correction factors", which then inherently means that the sensor is exposed first to a light from a known source which is called the reference response or the first characteristic response, which response is saved for reference. It also means that when the sensor needs to be calibrated, this reference or characteristic response is compared to the sensor's current response (later time characteristic response), to check for the deviation in reading. If there is a deviation in the response, the sensor is adjusted. For a sensor to be calibrated it inherently means comparing a reference response (good response) to a current response and adjusting the response if there is a difference between the two. If there is no reference response and no response at a later time there is nothing to compare. The step of storing the reference or first characteristic response is also present in Brody because Brody discloses that the calibration is done when the sensor is not exposed to the measuring radiation, which implies that in order for the sensor to be calibrated the initial reference or characteristic response needs to be stored to be available when the comparison is done. Thus, the steps that the Applicant argues that are not present in Brody, are in fact steps that are inherently encompassed by the definition of "sensor calibration". The argument that Engelhardt and Brody cannot be combined is not persuasive because Engelhardt specifically discloses that there is a need to calibrate the sensor in the system and therefore any available sensor calibration method can be used (Engelhardt does not limit the type of calibration).